In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE UNITED STATES
vs.
JAMES S. P. HATHAWAY AND RUFUS C. HATHAWAY. } No. 165.

THE CASE.

This is a certificate of a division of opinion between the judges of the circuit court of the United States for the eastern district of Michigan, on certain questions arising in an action of debt brought by the United States against the defendants to recover the duty payable, under the tariff act of July 14, 1862, at the rate of ten per centum *ad valorem*, on certain staves for pipes, hogsheads and other casks imported by defendants, on November 4, 1863, from Canada into the United States.

The plea was the general issue, with a stipulation between the parties that any matters of defence might be given in evidence on the trial that would be proper under a special plea, or notice for that purpose.

On the trial of the cause, certain questions arose, upon which the judges differed and divided in opinion, and which are now certified for the judgment of this court, to wit:

I. Whether, under the Reciprocity Treaty between the United States and Great Britain, concluded June 5, 1854, and the acts of Congress relating to the matters involved in said suit, the timber, staves and property, described in the proofs

and admissions in the cause, were liable to duty, as alleged in the declaration?

II. Whether, in case the jury should find the facts to be that said staves and property were unmanufactured articles in whole and in part, the said timber and property were liable to duty at the time of its importation?

III. Whether, under said Reciprocity Treaty, any timber other than such as is either round, hewed or sawed, is made free of duty?

LAWS PERTINENT TO THE CASE.

We will refer to the provisions of law brought by the case under review.

The *first* is the 3d article of the Reciprocity Treaty of 1854, between Great Britain and this country.

This article enumerates, among the articles which shall be admitted into each country respectively free of duty, "TIMBER AND LUMBER OF ALL KINDS, ROUND, HEWED AND SAWED, UNMANUFACTURED IN WHOLE OR IN PART." (10 Stat. at Large, 1091.)

The *second* is the 6th section of the act of July 14, 1862, which provides that from and after August 1, 1862, in addition to the duties theretofore imposed by law on certain enumerated articles, and on such as were, at the date of the act, exempt from duty, there shall be levied and paid a duty of ten per centum *ad valorem*, and among the enumerated articles are "STAVES FOR PIPES, HOGSHEADS, OR OTHER CASKS." (12 Stat. at Large, 550.)

The *third* is the 20th section of the act of March 3, 1861, which imposed a duty of twenty per centum on "BOARDS, PLANKS, STAVES," &c. (12 Stat. at Large, 189.)

The *fourth* is the 23d section of the same act, (March 3, 1861,) which exempted from duty "STAVES FOR PIPES, HOGSHEADS, OR OTHER CASKS." (12 Stat. at Large, 196.)

The *fifth* is the 13th section of the act of July 14, 1862, which added five per centum to the duty payable under the 22d section of the act of March 3, 1861, by "manufactures of wood not otherwise provided for." (See 12 Stat. at Large, 557; also, p. 192.)

It will thus be perceived that under the law in force at the date of the importation in question, (Nov. 4, 1863,) "*staves for pipes, hogsheads, or other casks,*" imported into the United States, paid a duty of *ten per centum* ad valorem, and all other *staves* a duty of *twenty per centum.* Under the act of 1861 "*staves for pipes, hogsheads, or other casks*" were exempt from duty, and other *staves* were liable to pay a duty of twenty per cent. By the act of 1862 the former were removed from the class of exempted articles, and charged with a duty of ten per cent. ad valorem. Other staves were unaffected by the act of 1862, and remained, after the passage of that act, charged with the duty payable by them under the act of 1861, namely, twenty per cent.; so that it would seem, unless the property imported by the defendants from Canada, and the duty on which is the subject of inquiry in this case, is embraced by and exempt from duty under the 3d article of the Reciprocity Treaty of 1854, it must be held liable to pay a duty either of *ten* per cent., by virtue of the act of 1862, as "*staves for pipes, hogsheads, or other casks,*" or a duty of *twenty* per cent. under the act of 1861, as within the general designation of "*staves;*" or, thirdly, a duty of thirty-five per centum as "manufactures of wood not otherwise provided for," if it should be held that the articles in question are not "*staves*" within the meaning of the act of 1861.

I.

The first question to be decided is, whether the property described in the proofs and admissions in the cause was, at the time of importation, liable to duty, as alleged in the declaration, under the Reciprocity Treaty, and the acts of Congress relative to the matters in controversy.

1. The first point is, as to the nature, character and legal quality of the property imported by the defendants.

It was admitted and proved, on the trial, that it was composed of white-oak wood, which was not in the condition of what is known as *round* timber, nor yet in the condition of what is known as *hewed* or *sawed* timber, but of wood which had been *split* before exportation, and thus reduced to the form of rough staves. The wood composing these articles had thus not only passed through the process of being *hewed* or *sawed*, but had also passed through the other process of being *split*, and thereby made to assume the form in which the articles appeared on importation. In this form they are commonly denominated in commerce, and among manufacturers, as "*rough split pipe and hogshead staves.*" The fact appears that some of these staves are adapted expressly for use in the manufacture of staves for pipes, and others are adapted expressly for use in the manufacture of staves for hogsheads. A rough split *pipe stave* is usually fifty-five inches in length, six inches wide, and from one to one inch and a half thick; while a rough split *hogshead stave* is usually forty-four inches long, five inches wide, and from one inch to one inch and a half thick. (Record, p. 3.) This fact is important to be noted as showing that the *object* and *result* of this process of splitting, which the wood undergoes *after* it is reduced to the form of timber, is to transform it into specific articles of commerce and manufacture adaptable to special and particular uses; that *intrinsically* considered they are themselves *articles of manufacture*, which

have received in trade a particular and well-known designation; and that any further labor and skill that may be necessary, after importation, to apply to them in order to transform them into other and somewhat different articles of manufacture are unimportant in the legal consideration and view of the subject. Whatever effect may be given to what was proved on the trial, touching the character of the labor and skill required in the manufacture of these "rough-split staves," and in relation also to the greater labor and higher art which are employed and exercised by the cooper, when he manufactures out of the "rough-split staves" the articles used in the construction of barrels and casks, the testimony does not and cannot affect the question, whether the "rough-split staves" are, or are not, in a legal sense, manufactures of wood; whether they are or are not wood which has passed out of the condition of mere *timber* or *lumber*, and become, in contemplation of law, another and different thing. It might as well be contended, we submit, that "*staves for pipes and hogsheads*" are not manufactures, because they require to be fitted and joined together by the cooper, in order to the construction of barrels and casks, as to maintain that these "*rough-split pipe and hogshead staves*" are *timber* or *lumber*, and not in any legal sense articles of manufacture, on the ground that *they* require the art and skill of the cooper, in shaving, planing and dressing them, in order to their reduction to the form of staves ready for use in the construction of the final article of, manufacture, the barrel or cask. The truth of the case seems to be that the process of *splitting* the timber or lumber used for these staves, though a rough and rude process, is still, legally speaking, a process of manufacture; that after the timber is split into the requisite and ordinary form and size it is, in a legal sense, *manufactured;* that the articles thus manufactured are known in commerce by a distinct designation, "rough-

split pipe and hogshead staves;" that these articles are susceptible of still further change, and by the application of additional and a higher order of labor, skill and art, are transformed into finished staves capable of being immediately used in the construction of pipes and hogsheads, and that these finished staves constitute the "raw material," so to speak, out of which the barrels, pipes and hogsheads of commerce are manufactured. A tree when and after it is felled, and hewed or sawed, is called *timber* or *lumber*. The tree is the "raw material," in a sense, from which "timber or lumber" is made. The timber or lumber, when split in the form and into the size described, is converted for exportation by a process of manufacture into these "rough-split pipe and hogshead staves." Timber is the "raw material" from which these articles are made. The "rough-split pipe and hogshead staves" are exported from abroad, and imported into this country, where they undergo another process of manufacture which transforms them into the staves used in the construction of barrels and similar articles. The "rough-split pipe and hogshead staves" bear the same relation to such staves that the timber after it is hewed or sawed, bears to the "rough-split staves." They are the "raw material" of the cooper's staves. Then again, before the cooper's staves are fitted for use, they must pass through another stage of manufacture; they need to be joined and fitted together before they can appear or be used as barrels or casks, and when they are thus prepared the work of manufacture has been completed, and the final article of commerce, the barrel or cask, or hogshead, makes its appearance. It is sufficiently apparent, and it needs no further remark to show, that the property imported by the defendants, and described in the proofs and admissions in this cause, did not consist of timber, or wood in a totally unmanufactured state, but that it was wood which had passed out of the con-

dition of timber or lumber, and become articles of manufacture well known, and commonly described in commerce and by manufacturers, by the special appellation of "rough-split staves."

2. Such being the nature, character and legal quality of this property, the second point arising under the first of the questions submitted is, whether it is embraced by and within the terms of the 3d article of the Reciprocity Treaty with Great Britain, or, in other words, whether it is made free of duty by the provisions of that treaty. Manifestly it is not. Most distinctly does the treaty speak only of "timber and lumber" which is manufactured neither in whole nor in part, and most clearly does it appear that the property in question is not timber or lumber, but is wood which has been manufactured in so far as to have assumed a new form and shape, and to have acquired another and different designation. Even if the "staves" in question were designated in common parlance "timber," they would not come within the treaty, since they could not be denominated either round, hewed or sawed timber, and only timber or lumber of one or other of those denominations, and one of one or other of those classes is covered by the provisions of the treaty. They might be denominable as "*split timber*." But it appears that timber, when split and reduced to the form of the articles now in question, acquires a new designation, and is called "staves." This general proposition would seem to be clear beyond all doubt, under the provisions of the treaty, viz: that only such articles of woods as fulfil these conditions are free of liability to pay duty, namely: 1*st*, that of being denominable, according to the language of trade and business, as "timber" or "lumber;" 2*d*, that of being in the state of what is known as "round, hewed or sawed" timber or lumber; and 3*d*, that of being round, hewed or sawed lumber which has been no-

wise subjected to any process of manufacture—"*unmanufactured in whole or in part.*" The articles imported by the defendants fulfil no one of these conditions. They are, therefore, beyond the protection of the Reciprocity Treaty. That law has been uniformly interpreted in the way indicated by the Treasury Department. In its regulations under the treaty of 1854, that department declares that "articles of wood entered under the designation of timber and lumber, or any other designations, remain liable to duty under the existing tariff if manufactured in whole or in part by planing, shaving, turning, *splitting* or riving, or any process of manufacture *other than rough hewing or sawing.*" (United States Tariff, 1865, compiled by E. D. Ogden, p. 107.)

3. The staves imported by the defendants not being free under the Reciprocity Treaty, the question remains for consideration, whether under the acts of Congress in force at the date of the importation they were liable to pay duty, as alleged in the declaration in this case. If we understand the scope of this point, it embraces not only the question whether the articles were chargeable with the payment of the very duty alleged payable by them in the declaration, but also the question, whether, if they were not so chargeable, they were liable to pay any other and different amount of duty.

We will first consider, therefore, (*a*) whether they were liable to pay duty at the rate of ten per centum ad valorem, as "staves for pipes, hogsheads, or other casks," under the 6th section of the act of 1862? (*b*) whether, if not so liable, they were chargeable with a duty of twenty per cent. as "staves," under the 20th section of the tariff of 1861? and (*c*) whether, if neither of the foregoing rates of duty was applicable to the articles, they were liable to pay any other duty under any other provision of law?

(*a.*) We submit that the staves in question were within the designation of "staves for pipes, hogsheads or other casks,' and thus were liable to pay ten per centum ad valorem according to the 6th section of the act of 1862. One of the admissions of the defendants is that the property consisted of white-oak timber split in the form of "*pipe and hogshead staves,*" and so called and known in common parlance at the place of importation. (Record, p. 2.) If the expression, "staves for pipes and hogsheads," and "pipe and hogshead staves," be convertible—as we submit they are—this admission of fact forecloses argument on the question of the liability of the articles under the 6th section of the act of 1862, because, according to the well-established rule of decision in this court, as the articles were bought and sold and used under the denomination mentioned, namely, "pipe and hogshead staves," they were liable to pay the duty imposed on such articles by the act of 1862, notwithstanding the fact that, before being capable of actual use in the manufacture of pipes and hogsheads, they must need undergo still further mechanical preparation at the hands of the cooper. The cases beginning with "200 chests of tea, (9 Wheaton, 439,) and ending with Homer *v.* The Collector, (1 Wall, 486,) including the cases of Barlow *v.* The U. S., (7 Pet., 409;) U. S. *v.* 112 cases of sugar, (8 Pet., 279;) Elliott *v.* Swartwout, (10 Pet., 150;) Lawrence *v.* Allen, (7 How., 796,) and Binns *v.* Lawrence, (12 How., 9,) all declare the doctrine to be that in order to determine whether any article is liable to pay a certain duty, the inquiry is, whether it is commonly denominated, and bought, and sold, as the article on which that duty is imposed by law, and if the result of the inquiry be the fact, that it is so denominated, and bought, and sold, then it is chargeable with the payment of that duty. We submit that, the record shows that these articles were, in contemplation of

law, "*staves for pipes and hogsheads,*" within the meaning of the act of 1862, and as such, liable to the amount of duty sought to be recovered in this action.

(*b.*) But if the court should not sustain this view of the case, and should hold that the articles in question are not within the meaning of the act of 1862, "staves for pipes and hogsheads," then we submit, and respectfully contend, that they are within the meaning of the 20th section of the act of March 3, 1861, denominable as "*staves,*" and as such liable to a duty of 20 *per centum.* The fact is spread all over the record that these articles were, and ever have been known as and called rough-split "staves" for pipes and hogsheads. (Rec., pp. 2 and 2.) The act of 1862, as has been stated, did not alter the duty leviable and collectable on "staves," under the act of 1861. It simply removed the articles known as "staves for pipes, hogsheads or other casks," from the class of exempted articles to which they belonged under the act of 1861, and imposed upon them a duty of ten per centum ad valorem. It left "*staves*" to pay the same duty charged upon them by the act of 1861. If the articles imported by the defendants *cannot* be regarded within the meaning of the act of 1862, as "staves for pipes, hogsheads or other casks," they certainly *can*, and we submit must, be regarded as "staves" within the meaning of the act of 1861.

(*c.*) But if this view be not correct, and the court should be of opinion that even under the act of 1861 the articles are not liable to pay the duty imposed upon "staves," then we submit, further and lastly, that they are liable to pay the duty payable according to the provisions of the 5th section of the act of July 14, 1862, by "*manufactures of wood, or of which wood is the component part not otherwise provided for.*" This section added a duty of five per cent. to the duty payable by those articles under the 22d section of the act of March 3,

1861, namely, thirty per centum. (12 Stat. at Large, 557, also 192.) As manufactures of wood "not otherwise provided for," the articles in question would pay thirty per centum ad valorem at the date of their importation.

II.

The second question certified to the court is, whether, if the jury should find the fact to be that the said staves were unmanufactured articles in whole or in part, they were liable to duty at the time of importation?

We submit, firstly, that if the jury should find the fact to be as stated, the articles in question would not be protected from liability to pay any duty imposed by statute under the treaty of 1854, if the further fact appear, and is found by them, that the wood of which the articles were composed had undergone previously to exportation any process other than those of hewing or sawing. In order that any article of wood may be brought within the treaty, it must appear not only that it is properly denominable as "timber" or "lumber," but also that it is either round, or hewed, or sawed. If it has been *split*, whether splitting be regarded as a process of manufacture or not, or, if not so regarded, whether the article has or has not undergone any process of manufacture, then it cannot be imported under the treaty free of duty. The treaty expressly designates "*round, hewed or sawed*" timber as an article exempt from duty, and none other is saved by it from liability to pay duty on importation from Great Britian or any of her provinces. The question then arises, whether the statutes of the United States imposed a duty on raw or unmanufactured wood imported from Canada, and not within the treaty of 1854? The 24th section of the act of 3d March, 1861, (12 Stat., 196,) answers that question. That section provides that there shall be levied on all raw or unmanufactured articles

a duty of *ten per centum* ad valorem. If, therefore, the articles in question are not within the Reciprocity Treaty, nor within the act of 1862, as manufactures of wood, they are liable to pay a duty of ten per centum ad valorem.

III.

The third of the certified questions is, whether, under the Reciprocity Teaty, any timber other than such as is either round, hewed or sawed, is made free of duty? Clearly and distinctly not, as has been shown in the foregoing remarks upon the first two questions now discussed. No kinds of timber, save round, hewed or sawed timber, are contemplated by the treaty of 1854, or provided for therein. We submit on this point what has been said on the first two points contained in the certificate.

JAMES SPEED,
Attorney General,
J. HUBLEY ASHTON,
Assistant Attorney General.

SUPREME COURT

OF THE

UNITED STATES.

THE UNITED STATES OF AMERICA,

vs.

ICHABOD S. QUIMBY.

THE UNITED STATES OF AMERICA,

vs.

JAMES S. P. HATHAWAY,

AND

RUFUS C. HATHAWAY.

These causes came to this Court from the Circuit Court for the Eastern District of Michigan, by certificate of

disagreement of opinion, between the Judges of said Circuit Court, upon certain questions arising upon the trial.

As the questions involved are substantially the same, we do not deem it necessary to make separate arguments, but add after our argument in the case vs. Quimby, a few remarks in regard to a single point, inwhich the case vs. Hathaway may be contended to differ from the case vs. Quimby.

THE UNITED STATES OF AMERICA,

vs.

ICHABOD S. QUIMBY.

STATEMENT OF CASE AND ARGUMENT FOR DEF'T.

The action is assumpsit to recover for duties alleged to be due from the defendant, upon certain property, (to wit split timber) imported by him from the Province of Canada.

The duties are claimed under Section_____ of Act of March 2nd, 1861—12 Statutes at large.

The defense set up, is that the said property is made free of duty by Article three (3) of the Reciprocity Treaty so called—10 Statutes at large, 1089-90-91 and the Act of Congress passed to give effect to said Treaty—10 Statutes at large, 587.

By this Treaty and Act, certain articles of property enumerated in a Schedule attached to the Treaty, "the growth and product of the aforesaid British Colonies" &c., are made admissible into the United States free of duty.

And among such articles are:

"Timber and lumber of all kinds, round, hewed and sawed."

The Revenue Department of the Government seemed to have construed this Treaty as if it read: "Timber and lumber of all kinds except such as is manufactured in whole

or no part otherwise than by rough hewing and sawing,' and to have claimed the timber in question to be subject to duty upon the theory, that by "splitting" it is "manufactured in whole or in part by a process of manufacture other than by rough hewing or sawing."

See "Treasury Regulations 1857," page, 498.

We submit that this is a misconstruction of the Treaty.

Clearly timber and lumber manufactured in whole or in part by any process whatever, whether by rough hewing or sawing, or otherwise is excluded from the benefit of the Treaty.

But we submit that timber or lumber manufactured in whole within the meaning of the Treaty is timber or lumber reduced from its crude state as timber or lumber to the form of some specific article complete for use. And timber or lumber manufactured in part is timber or lumber, upon which labor has been expended in reducing or moulding it towards some specific article. However much or in whatever form, or by whatever process labor has been expended upon the crude material, if it has not through such labor commenced to take the form of some particular article as distingushed from other articles into which, as crude material it was capable of being manufactured, it cannot be said to be manufactured in part.

We insist therefore, that the facts as certified establish not only, that the property in question imported by defendant, was "of the growth and production of (one of) the British Provinces aforesaid," and "timber," but that it was also timber "unmanufactured in whole or (and) in part."

This timber was however, neither "round," "hewed" nor "sawed," but split, and upon the trial below, was for that reason claimed on behalf of the Plaintiff not to be within the said Treaty.

The only real question here, therefore is, that stated in the 3rd point of disagreement certified to wit:

"Whether under said Treaty and the Act of Congress passed to carry the same into effect, any timber other than such as is round, hewed or sawed is made free of duty.

The answer to this question of course, depends upon whether the words "round, hewed and sawed" were intended to, and do limit and restrict the preceding words "timber and lumber of all kinds."

On behalf of the Defendant we contend that:

The words "round, hewed and sawed" as used must be taken to be an enumeration merely of *certain* of the particulars intended to be included in the preceding general words, "timber and lumber of all kinds" and not as limiting and restricting said general words.

I.

This is the natural, gramatical and logical construction of the sentence.

Only by a forced and awkward construction can it be held to mean "all kinds of round, hewed and sawed timber and lumber."

And there is no rule requiring or justifying such a construction.

Where general words follow particular words, the rule undoubtedly is to construe the former as applicable to the

things or persons particularly mentioned, and not otherwise.

Sedgewick on Const., and Stat., Law. 423.

But there is no rule that particular words following general words are to be construed to limit and restrict such general words.

On the contrary the rule is that they are not to be so construed unless the whole instrument leads clearly and necessarily to the conclusion that such was the intention.

Chitty on Con. 87 et seq.
Platt on Cov. 334, 49–79.
Hesse v. Stevenson 3 B. & P. 565.
Burton v. Fitzgerald, 15 East 538.

But we insist :

II.

That no such intention is apparent here, but the contrary.

1. An examination of the Schedule to Article B of the Treaty, will convince, we think that the intention was to permit a free mutual interchange of all crude and unmanufactured products of the respective countries.

2. If the intention had been to discriminate against all timber and lumber except such as was either round, hewed or sawed, and exclude it from the benefit of the Treaty, the language would have clearly indicated such intention. It would have been "all kinds of round, hewed and sawed

timber and lumber," or "all kinds of timber and lumber which is round, rough, hewed or sawed only."

3. If it was intended to limit the benefit of the Treaty to round, hewed and sawed lumber there must have been some supposed reason for thus limiting it. But we submit that no such reason can be imagined.

Timber split merely is certainly less removed from its crude material, than either hewed or sawed timber. And the Treaty we have seen evidently intended to discriminate in favor of the crude material.

4. The construction against which we contend, if adopted leads to this absurd result :

Timber split, as was the timber in question, in this suit, is excluded from the benefit of the Treaty. If after being thus split. the several pieces are rough, hewed or sawed—which would bring them into better shape for use—they become admissible free of duty, under the Treaty.

Certainly the framers of the Treaty cannot be held to have *intended* to provide for such a result.

The only effect of holding timber split like that in question here excluded from the benefit of the Treaty, will be to compel the expenditure of further labor upon it in Canada, in hewing or sawing it.

We suggest that the words round, hewed and sawed were inserted to exclude the construction which might otherwise ave been contended for that timber, hewed or sawed is in part manufactured.

John Sherman
Of Counsel

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John Stewberry
Of Counsel for Defendant

JOHN S. NEWBERRY,
For Defendant.

THE UNITED STATES OF AMERICA,

vs.

JAMES S. P. HATHAWAY,
AND
RUFUS C. HATHAWAY.

This action is in form Debt to recover for duties claimed to be due upon certain staves for pipes, hogsheads and other casks imported by the Defendants from the Province of Canada.

The facts as certified show, that Defendants did import from said Province of Canada, certain white Oak timber of the growth and production of said province, split into what is known and called in common parlance "rough split pipe and hogshead staves."

The questions upon which it is certified that the judges disagreed, are the same as in the case vs. Quimby *ante*.

The only difference between that case and this is that in this case there appears at first blush more plausible ground to claim, that the timber imported was manufactured in whole or in part within the Treaty.

But we submit that this difference is merely apparent. and not real.

The facts as certified show:

1. That the most convenient form for removal from the forests and for transportation into which oak and other straight grained hard wood timber can be reduced, is that of the rough split pipe and hogshead stave, so called, and that such form is also best adapted for the preservation of wood in seasoning, &c.

2. That to reduce the timber into such form does not require skilled labor of the mechanic. but the *most common unskilled labor.*

3. That although timber split in this form, is usually called "rough split pipe and hogshead staves" yet that its use is not wholly or *mainly* confined to the manufacture of hogsheads, pipes or other casks, but that it is used in the manufacture of almost every article manufactured wholly or in part of wood, and also, extensively as tonnage and in the storage of cargoes of ships and vessels.

4. That by Coopers such timber is known as "Coopers Timber" and is considered and treated as raw material.

We submit that in the light of these facts this timber must be held to be unmanufactured, raw material, as much so any sawed lumber.

The fact that timber thus split is commonly called by a name which would seem to indicate a manufactured article is of no consequence whatever.

Lumber sawed into particular forms takes such names as for example: "flooring," "siding," "deck plank," "lath" etc., etc. Yet such lumber is not held to be manufactured.

Staves are but a species of lumber.

"Lumber in America, Timber sawed or split for use, as bearers, joyce, boards, planks. *staves* and the like."

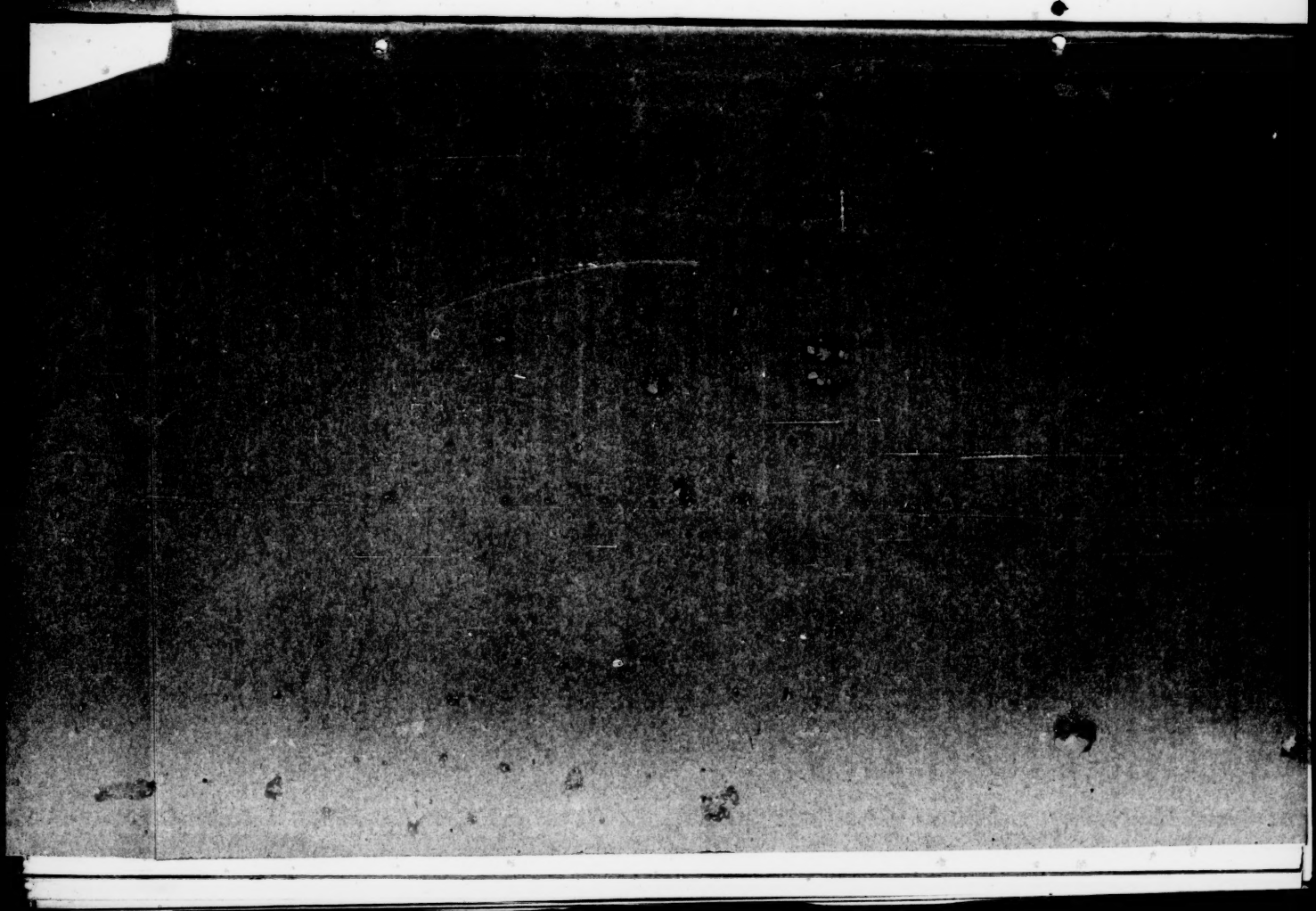
Webster's Dictionary, "Lumber."

The labor necessary to be expended to reduce the tim-

ber to the form of sawed lumber is evidently greater and more skilled than that necessary to reduce it to the form of rough split pipe or hogshead staves, so called.

What reason there could have operated to induce a discrimination in the Treaty in favor of the former? We submit that none can be imagined and that no such discrimination was contemplated or intended. And that timber in question was entitled to admission free of duty under the Treaty.

JOHN S. NEWBERRY,
For Defendant.



1 UNITED STATES OF AMERICA:

The circuit court of the United States for the seventh circuit and eastern district of Michigan.

At a circuit court of the United States, begun and held at the city of Detroit, for the eastern district of Michigan, on Wednesday, the fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and in the eighty year of American independence.

Present: The Honorable Noah H. Swayne, circuit judge, and Hon. Ross Wilkins, district judge.

THE UNITED STATES OF AMERICA
vs.
ICHABOD L. QUIMBY.

This was an action of assumpsit brought by the plaintiffs to recover duties claimed to be due and payable under section 24 of the act of Congress of March 2d, 1861, entitled "An act to provide for the payment of outstanding treasury notes, to authorize a loan, to regulate and fix the duties on imports and exports, and for other purposes," upon certain split timber, alleged to have been imported by the defendant from the province of Canada.

Plea *general issue*, and stipulation that any matter of defence might be shown in evidence under said plea that would be admissible and proper under any special plea or notice.

And the said cause coming on for trial at the present June term, 1864, of said court, before the court and jury duly empanelled, thereupon
2 the plaintiffs' counsel called the following witnesses and gave the following testimony, to wit:

Ichabod L. Quimby, defendant in said cause, was called by said plaintiffs, and duly sworn for and in his behalf, and testified as follows, to wit: That in and during the years A. D. 1860, 1861, and 1863 he, the said witness, imported from the province of Canada West into the United States, at the port of New Baltimore, in the eastern district of Michigan, six hundred and sixteen cords of split white ash timber, mostly designed to be used in the manufacture of the long shovel handle, (so called;) that said timber was the growth and product of the province of Canada West, and of the value of three dollars and thirty-seven cents per cord at the time of its purchase and importation; that previous to and at the time of the importation of said timber, he, the said Quimby, was informed by the deputy collector located at the place of importation that said timber was free of duty under the reciprocity treaty of 1854 between the United States and Great Britain, and under and by the direction of said deputy collector the said timber was entered free of duty in due form of law.

The said Quimby, being so sworn as aforesaid, further testified on the said trial, that the splitting of said timber before its importation was no part of the process of the manufacture of said shovel handles, but was a mode adopted by the persons of whom he purchased the same in reducing the size and weight of the timber for convenience in removing the same from
3 the place of its growth and transportation; and that to split said timber to the size and form in which it was imported required but the most common labor, and did not require the skill of a mechanic; that the manufacture of the shovel handle made by the said witness was exclu-

sively by machinery; that the most convenient form of the timber or raw material was in a section of the round trunk of the tree four feet and six inches in length, that being the proper length of the handle; that in the process of manufacture this round piece of timber is first cut or divided lengthwise by sawing into plank one inch and three-fourths thick, which said plank are slit or cut by sawing into pieces of one and three-fourths inches in width, so as to form a straight square piece of timber of one and three-fourths inches in thickness and four feet long, which pieces of timber are next placed in a lathe, by which they are turned and made in a round form, and this is the extent to which his machinery carries the manufacture of the shovel handle, thus leaving it only in part manufactured; that the most convenient form in which said timber could be imported to promote the interests of him, the said witness, would be in the round log about fourteen feet in length

Said witness further testified on the said trial that a portion of said split timber so imported by him had been split in halves and quarters in felling the trees, and the effect of the sun and elements upon the the timber after being fell in the forest; that after the importation of said timber it was the custom of said witness to select first all pieces of said timber that are
4 fit and proper to work into shovel handles; that generally about seven-eighths of the whole quantity would be fit for that purpose, and the balance would be cut by machinery in staves, heading, and lumber to be used in making certain musical instruments; that a portion of said timber on being culled and selected, would only be fit for firewood; that the split timber so imported was not imported in the form of the stave or heading bolt, either in thickness, width, or length.

It was agreed and admitted by the respective parties that in case the jury found a verdict in favor of the plaintiffs they should assess the damages at the sum of three hundred and twenty-nine dollars and sixty cents.

No other testimony was offered or given.

Thereupon the following questions arose, to wit:

1st. Whether the said timber described and set forth in said declaration under the proof made in the cause was liable to duty, or whether the said timber was made free of duty by the reciprocity treaty, so called, concluded the fifth day of June and ratified on the ninth day of September, A. D. 1854, between the United States of America and the Queen of Great Britain, and the laws and acts of Congress relative thereto.

2d. That in case the said jury should find from the facts admitted and proved on the trial in the said cause, that the said timber so imported by the said defendant was timber unmanufactured in whole and in part at the time of its importation, and was of the growth and product of the
5 province of Canada, the same would in that case be liable to the payment of duties under the laws and treaty regulations of the United States.

3d. Whether, under said treaty, and the acts of Congress passed to carry the same into effect, any timber other than such as is either round, hewed, or sawed, is made free of duty.

On which questions the opinions of the said judges were opposed.

Whereupon, on motion of the plaintiffs by their counsel that the points on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of this court, to be finally decided, it is ordered that the foregoing statement of the pleadings and facts, which is made under the direction of the judges, be certified according to the request of the plaintiffs by their counsel and the law in that case made and provided.

UNITED STATES OF AMERICA, *Eastern District of Michigan:*

I, William D. Wilkins, clerk of the circuit court for the eastern district of Michigan, do hereby certify the foregoing to be a copy from the minutes.

Given under my hand and seal of office, at Detroit, on the fif-
[SEAL.] teenth day of June, in the year of our Lord one thousand eight hundred and sixty-four.

WM. D. WILKINS, *Clerk.*

Filed October 27, 1864.